



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

April 20, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Flora Krind**  
Tax Registry No. 906594  
Housing Borough Brooklyn  
Disciplinary Case No. 83033/07

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on September 23, 2008 and was charged with the following:

**DISCIPLINARY CASE NO. 83033/07**

1. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1200 hours and the commencement a meal period, did fail and neglect to:
- a. notify the switchboard operator at the beginning of said meal period and the location where said meal was to be taken, as well as at the return to post;
  - b. obtain meal at assigned post, and in a place maintained for eating purposes; and
  - c. make an Activity Log (PD112-145) entry prior to leaving post including meal location address, and again upon returning to post.

**P.G. 212-02, Page 11, Paragraph 1-4**

**MEAL PERIOD  
COMMAND OPERATIONS**

**P.G. 203-05, Page 1, Paragraph 2-3**

**PERFORMANCE ON DUTY-GENERAL  
GENERAL REGULATIONS**

2. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1215 hours, while on duty, in or about the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Detective wrongfully stole or attempted to steal merchandise, to wit, cosmetic items, from said store. (As amended)

**P.G. 203-10, Page 1, Paragraph 2(c)**

**PUBLIC CONTACT  
PROHIBITED CONDUCT  
GENERAL REGULATIONS  
PETIT LARCENY**

**N.Y.S. PENAL LAW SECTION 155.25**

3. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1215 hours, while inside the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by impeding or preventing a Department investigation in that, having been stopped at the exit of said store and informed by an employee of said store that said Detective was suspected of larceny, did wrongfully and immediately leave said store, notwithstanding having been asked by said employee to wait while said employee went back into the store. (As amended)

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT  
PROHIBITED CONDUCT  
GENERAL REGULATIONS**

**P.G. 207-21, Page 2, Notes - ALLEGATIONS OF CORRUPTION AND SERIOUS  
MISCONDUCT AGAINST MEMBERS OF THE  
SERVICE COMPLAINTS**

4. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, having been stopped and accused of committing a larceny at about 1215 hours by an employee of the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did fail and neglect to notify the Department's Internal Affairs Bureau, as required. (As amended)

**P.G. 207-21, Page 1, Paragraphs 1-3**

**ALLEGATIONS OF CORRUPTION AND  
SERIOUS MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE  
COMPLAINTS**

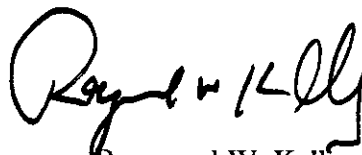
In a Memorandum dated January 13, 2009, Deputy Commissioner Karopkin found the Respondent GUILTY IN PART of Specification No. 1 and GUILTY of Specification Nos. 2, 3 and 4. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct here, especially while on-duty, is egregious. Such behavior and conduct unquestionably compromises Respondent Krind's ability to remain a viable member of this Department. Thus, her immediate separation from the Department is required.

Although Deputy Commissioner Karopkin recommends that Respondent Krind be summarily dismissed, I will permit an alternative manner of separation from the Department at this time. It is therefore directed that a post-trial Vested-interest retirement agreement be implemented with the Respondent. In consideration of such, Respondent Krind is to remain, and to separate from the Department, on a continued suspended duty status. The Respondent is to also forfeit all suspension days without pay since served, and is to forfeit all accrued leave and time balances. Additionally, Respondent Krind will immediately be placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Krind's written agreement to not initiate administrative applications or judicial proceedings against the

New York City Police Department to seek reinstatement or return to the Department. If Respondent Krind does not agree to the terms of this Vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY.***

A handwritten signature in black ink, appearing to read "Raymond W. Kelly". The signature is fluid and cursive, with the first name "Raymond" being more prominent than the last name "Kelly".

Raymond W. Kelly  
Police Commissioner

0001 HRS, APRIL 20, 2009 TO  
2400 HRS. APRIL 19, 2010



## POLICE DEPARTMENT

January 13, 2009

-----X  
In the Matter of the Charges and Specifications : Case No. 83033/07  
  
- against - :  
  
Detective Flora Krind :  
  
Tax Registry No. 906594 :  
  
Housing Borough Brooklyn :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Martin G. Karopkin  
Deputy Commissioner - Trials

APPEARANCE:

For the Department: David Green, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Eric Sanders, Esq.  
Jeffrey L. Goldberg, P.C.  
2001 Marcus Avenue  
Suite S160  
Lake Success, NY 11042

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on September 23 and 24, 2008 and December 18, 2008 charged with the following:

1. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1200 hours and the commencement a meal period, did fail and neglect to:
  - a. notify the switchboard operator at the beginning of said meal period and the location where said meal was to be taken, as well as at the return to post;
  - b. obtain meal at assigned post, and in a place maintained for eating purposes; and
  - c. make an Activity Log (PD112-145) entry prior to leaving post including meal location address, and again upon returning to post.

P.G. 212-02, Page 11, Paragraphs 1-4 – MEAL PERIOD

COMMAND OPERATIONS

P.G. 203-05, Page 1, Paragraphs 2-3 – PERFORMANCE ON DUTY– GENERAL  
GENERAL REGULATIONS

2. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1215 hours, while on duty, in or about the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Detective wrongfully stole or attempted to steal merchandise, to wit, cosmetic items, from said store. (*As amended*)

P.G. 203-10, Page 1, Paragraph 2(c) – PUBLIC CONTACT–PROHIBITED CONDUCT  
GENERAL REGULATIONS

N.Y.S. Penal Law Section 155.25 – PETIT LARCENY

3. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, at about 1215 hours, while inside the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by impeding or preventing a Department investigation in that, having been stopped at the exit of said store and informed by an employee of said store that said Detective was suspected of larceny, did wrongfully and immediately leave said store, notwithstanding having been asked by said employee to wait while said employee went back into the store. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–PROHIBITED CONDUCT  
GENERAL REGULATIONS

P.G. 207-21, Page 2, Notes – ALLEGATIONS OF CORRUPTION AND  
SERIOUS MISCONDUCT AGAINST MEMBERS  
OF THE SERVICE  
COMPLAINTS

4. Said Detective Flora Krind, while assigned to the 113<sup>th</sup> Precinct, on or about January 11, 2007, having been stopped and accused of committing a larceny at about 1215 hours by an employee of the Pathmark store located at 134-40 Springfield Boulevard, Queens, New York, did fail and neglect to notify the Department's Internal Affairs Bureau, as required. (As amended)

P.G. 207-21, Page 1, Paragraphs 1-3 – ALLEGATIONS OF CORRUPTION AND  
SERIOUS MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE  
COMPLAINTS

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by Eric Sanders, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty in part of Specification No. 1, Guilty of Specification No. 2, Guilty of Specification No. 3 and Guilty of Specification No. 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Michael Renna and Sergeant John McCormick. The Department also offered into evidence an audiotape of the Official Department Interview of the Respondent, Department's Exhibit (DX) 1A, a transcript of this interview, DX 1B, a corrected transcript of this interview, DX 1C, and an audiotape of an interview of Ms. [REDACTED],

DX 2A, a transcript of this interview, DX 2B, and the corrected transcript of this interview, DX 2C.

Lieutenant Michael Renna

Lieutenant Renna is assigned to Group 27 of the Internal Affairs Bureau and has been so for approximately three years. His duties include the supervision of four to five investigators and he indicated that he participated in the investigation of the Respondent for the allegations herein.

Renna testified that on January 11, 2007, his group received an assignment regarding a shoplifting allegation and his response was requested to Pathmark on Springfield Boulevard in Queens. He indicated that it was around noon on January 12 when he responded to the store and he conducted an interview of [REDACTED] who is employed as a security officer at Pathmark. Renna identified DX 2A and 2B as the tape and transcription of the interview of [REDACTED] and stated that the interview was recorded in its entirety. He further testified that Sergeant Henry Conde and Detective Peter Cappuccillini, both of Group 27 were present for the interview in addition to two sergeants from Queens South Investigations. Renna indicated that upon reviewing the tape the week prior to trial, he ascertained that it contained the entire interview of [REDACTED] that he conducted on January 12, 2007.

Regarding the transcript of [REDACTED]'s interview, DX 2B, Renna stated that it was "accurate except some names were inaccurate." He acknowledged that he made corrections to the transcript with respect to the names of who was speaking during the interview, but that it was a fair and accurate representation of the entire interview of [REDACTED]

Upon a *voir-dire* examination of the [REDACTED] interview transcript, DX 2B, by Respondent's counsel, Renna acknowledged his name did not appear on the cover page but that

his initials were on the top and that he was an interrogator for the interview. Renna stated that he looked at the transcript and that "on one of the pages on the transcript, I crossed out the name and I put my name after listening to the tape itself." He was not sure who Detective Beckinsale was and opined that he may have been a member of Queens South Investigations, as members from that command were present. He did not know who Sergeant Campbell, Lieutenant McKurdy or Lieutenant Werner was, indicating "some of the names on the transcripts were inaccurate."

Further examination of Renna regarding the [REDACTED] interview revealed that he decoded the names on the cover of the transcript to be as follows: Lieutenant Werner is Lieutenant Renna, Lieutenant McKurdy is Sergeant Conde, and Detective Beckinsale is Detective Cappuscelli. He acknowledged that he, Conde and Beckinsale were the individuals who interviewed [REDACTED] on January 12, 2007. A re-cross examination of Renna revealed that he reconciled the transcript with the tape and that each of the aforementioned names is consistent throughout the transcript.

Upon inquiry by the Court, Renna indicated that he did not make any corrections to the names beyond the first page; however, he checked the transcript in its entirety. Renna further clarified that it was not that the cover page names were misspelled, it was that they were "not accurate." He explained that Lieutenant McKurdy is actually Sergeant Conde, who asks a number of the questions during the interview. He agreed that the names were wrong throughout the entire transcript and acknowledged again that each wrong name is consistent to a respective interviewer throughout the entirety of the transcription. He also acknowledged that the transcript was an accurate representation of [REDACTED] interview.



Sergeant John McCormick

Sergeant McCormick is assigned to the 113 Precinct, and has been employed by this Department for 25 years. He has been assigned to the 113 Precinct for 15 years and is presently an anti-crime supervisor.

McCormick indicated that he was working on January 11, 2007, and was assigned as the patrol supervisor from 2:50 pm to 11:47 pm. He testified that on that date, he responded to the Pathmark store at about 4:50 pm, "...I was directed by central communications to 85, to assist a 4 to 12 sector car, sector boy, regarding a past larceny at the supermarket." Upon arrival, McCormick explained that two officers, Otarola and Hayes, advised him "they had a larceny involving a member of service from the 113<sup>th</sup> Precinct." The two officers told McCormick: "they told me they had a security officer that observed Detective Krind putting items in her pocketbook, or handbag, and she was followed from I guess the cosmetics aisle in the supermarket. And she also had some bottled water with her. The security officer observed Detective Krind pay for the bottle of water, but go through the cashier without paying for the items in her handbag."

McCormick spoke to the Pathmark security officer. She reiterated to him "pretty much the same scenario" that the two officers told him. The security officer told McCormick that "she confronted [Krind] as she was exiting the store and brought her to the security office. When she got to the security office, she left [Detective] Krind in the security office to get some assistance so she can search Detective Krind's bag. By the time she got back to the security office, Detective Krind had left." McCormick testified that the security office was a small room with a table located near the entrance past the registers.

McCormick also indicated that he spoke with a security supervisor from Pathmark who was sent to the scene from New Jersey. He recalled nothing unusual about the incident other than that it involved a member of the service and he made a notification of this fact to the Commanding Officer of the 113 Precinct.

Upon cross-examination, McCormick agreed that the Pathmark security officer's name was [REDACTED] and that he first met her in front of the store. [REDACTED] was unable to provide any details about specific items that the Respondent took. McCormick indicated that he was informed by [REDACTED] that she had the Respondent under observation but could not elaborate if that meant by means of a video camera.

He reiterated that [REDACTED] was unable to specify the items the Respondent took but indicated that they came from the cosmetics aisle. McCormick did not ask [REDACTED] if the Respondent made any statements to her, nor did [REDACTED] inform McCormick that she had. He further explained that [REDACTED] informed him that the Respondent did go into the security office but that his arrival to the scene was later and he never saw her in the security office.

McCormick agreed that the Pathmark "security people" showed him a picture and he described it as a "blurry picture" that was not "discernable." He explained that all he could determine from looking at it was that it was a female exiting the store. He was unable to positively identify that it was the Respondent.

#### Summary of the Official Department Interview of the Respondent<sup>1</sup>

An Official Department Interview was conducted of the Respondent on February 8, 2007 by members of the Internal Affairs Bureau, the Assistant Department Advocate, David Green was also present as well as the Respondent's attorney Eric Sanders.

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<sup>1</sup> This summary is based on the corrected transcript, Court Exhibit 1, which was prepared by the Court after a review of the audio tape (DX 1) and presented to counsel for comment on December 18, 2008.

The Respondent indicated that on January 11, 2007, she was working from 8:00 am to 4:33 pm and was assigned to the 113 Precinct Community Affairs Unit. She had been assigned in that capacity for a few years and prior to being assigned to that function, she performed patrol and school post duties.

The Respondent indicated that she left the precinct on that day at around 12:00 pm in order to go to Pathmark located off Springfield Boulevard, about two to three miles away from the precinct. The Respondent stated that she drove her personal car, a 2004 Nissan Maxima, to the store and did not notify the desk officer that she was leaving the precinct. Her purpose for going to the store was to get lunch and "to go get water."

The Respondent stated that she was attired in plain clothes, consisting of a brown skirt and coat. It took about ten minutes for her to arrive at the supermarket. Upon arrival, she stated that she got a cart and went inside the store and went through the aisles. She went down the aisle that had shampoo and when shown a photograph of the aisle containing shampoo she agreed that this was an aisle that she went down.

She explained that she went inside to buy "things for lunch" and stated that she bought fruit and vegetables. There was then a discussion about hair clips:

LT. MICOZZI: Now at any point in time – like you said, you were in the aisle with the shampoo – did you take any items off the shelf when you were in that aisle?

DET. KRIND: When I was there I took some clips off the aisle. I was looking at the clips.

LT. MICOZZI: You said you were taking clips. Are you referring to some type of hair clip? Something like that?

DET. KRIND: Yeah.

LT. MICOZZI: What did you do with those clips?

DET. KRIND: I had a cart in which I have my purse. I put things on top or in my purse and keep on walking. I looked at items down the aisle.

LT. MICOZZI: Down the aisle and you said you took the clips, you put them in the cart. Basically, your bag was in the small area where the kids would sit, is that correct?

DET. KRIND: Yes, yes.

LT. MICOZZI: And your bag was in that area – your handbag.

DET. KRIND: Yes.

LT. MICOZZI: And you put those items inside?

DET. KRIND: Yes, I did.

LT. MICOZZI: Now the bag we're looking at today, the bag is on your lap – it's open, it's not closed or latched in any way. Is that how it was?

DET. KRIND: I might have opened it. I don't remember.

LT. MICOZZI: You don't remember? But you did put the items in.

DET. KRIND: Normally I always keep my bag open but that day I don't remember if it was open or not.

LT. MICOZZI: Okay. Anyhow, whether you put them in the bag or on top of the bag you put those items on top or in the vicinity of your purse?

DET. KRIND: Yes.

LT. MICOZZI: Okay, after you put those items in there where did you go after? Did you continue going down that aisle?

DET. KRIND: I continued down that aisle. I think I went back up the aisle and I was going towards – I went by the fruit then I went towards the bank, (CX-1 p. 9).

The Respondent explained that she was at the bank for fifteen minutes and made a deposit at the window in the amount of \$500 to \$800. After the bank transaction, she said that she went to look for water and to look at vegetables. She purchased a case of water, which might have been either Poland Spring or Deer Park which she thinks was in a blue bottle but she was not quite sure. When asked if she picked up any other items, the Respondent indicated that "I always pick up things. I might have picked up clips. I didn't pick up no makeup. Clips then – bobby pins." She denied picking up any facial products or creams.

Subsequent to the bank transaction and obtaining the water and vegetables, the Respondent stated that she proceeded to the cashier and then "I opened my bag, moved some things, saw the items, you know, so I put them back, chuck them aside and I kept going. I paid for my items. Then I went and got Lotto at the machine then I went out."

The Lotto machine was inside the supermarket and in front of the cashier. With respect to "moving the clips," the Respondent explained that, "I had things, I had my wallet (inaudible) and I chucked them." When asked, "Where?" she responded: "Probably on the side of the ...on the ground something like that – I don't remember, but I checked them because I wasn't buying them and I said let me stick with what I need to buy and I also got rid of the vegetables."

The vegetables, she indicated, were possibly string beans or carrots. The Respondent said that she did not have a receipt for the day's purchases.

The Respondent was asked if she purchased Lean Cuisine frozen dinners, green beans, Poland Spring water by the case, apricots and plums. She recalled purchasing most of these items and acknowledged that she used a bonus card from the supermarket for savings. She agreed that the total of the items came out to \$9.80, and at this point, it was about 1:00 pm on January 11. She proceeded to purchase two to three cards from the Lotto machine after paying at the cashier and then went to exit the store.

Upon exiting, the Respondent agreed that she was approached by someone in the vestibule area. She described the person as a "black woman, regular clothes...in her late twenties, early thirties." The Respondent described what happened next:

She said, 'Excuse me, Miss, did you purchase any items and didn't pay for items?' Then I said... she said it loud and I looked at my bag and said 'No,' you know ready to pull out my things and that's what she said to me at the time and I walked towards the door of the security office because I didn't want to do it in the hallway – people there know me. I went towards the security door. She said 'wait.' Then she left. I was like – I'm on meal, that I'm not supposed to take. That I didn't tell anybody, I had to get back to the job. I just went and got some food. I abruptly left, (CX-1 p.14).

When asked if she took all her items that she had purchased with her the Respondent stated: "No, I did not. I left the water. I left the water. But I took my fruit and whatever I had in my bag at the time, cuz I wanted to go towards the door and go into the security. She said 'No.'"

The Respondent indicated that she never actually entered the security office and that the woman did not identify herself in any way.

Asked exactly what the woman said the Respondent stated: "She said 'Excuse me, Miss. Did you pay for some items and take some items?'" and I said 'No, I don't think so' so I showed her. I mean, I was open and she wasn't interested so I thought lets go towards the security office and she said 'No wait,' and then she left," (CX-1 p.15).

The Respondent denied telling the woman that she had forgotten to pay for some items and stated: "No, I showed her. I said 'I don't know.'" I said 'Look.' I just told her 'I have items in my bag," and she just said, 'Wait.' She just cut me off. So I waited and then she left," (CX-1 p.15).

When told that the witness had said that the Respondent admitted having items she did not pay for and apologized the Respondent stated: "No, I didn't. I told her – I said, 'No, I don't know. Come look.' I said 'No, come look.' I said 'I don't know.' I'm looking. I always keep my bag open. That's about it," (CX-1 p.15).

The Respondent did not know the woman was from store security and acknowledged that at that moment she was approached she did not know if the person was employed by Pathmark but she believed she was. After several questions the Respondent acknowledged that the person was accusing her of theft, specifically shoplifting.

Upon walking towards the door to the security office, the Respondent stated that she did not know why the woman who had stopped her left as she did not state a reason for walking away. The questioner then stated: "You just assumed she was going to walk away? Accuse you of stealing and just walk away." To which the Respondent replied: "Well she didn't accuse me of stealing. She asked me if I had any items in my bag- did I pay for some and didn't pay for

some.” The questioner then said: “That’s basically stealing,” to which the Respondent replied: “Well yeah, it is. It is. She left. She walked away. She didn’t detain me. She didn’t say ‘Hold on,’ or nothing. She left.”

The Respondent stated that the woman walked back into the store and that, “When she left, I left.” The Respondent then walked quickly back to her car “I left because I knew I hadn’t – I didn’t have meal at that time.”

The Respondent indicated that she did not wait in the office because it was closed. When asked why she did not ask for a manager or someone with authority the Respondent stated: “She didn’t say anything. She didn’t ask me for anything. She wouldn’t let me speak, okay?” The Respondent indicated that she was stopped for maybe two minutes but she did not know.

When asked why, after being accused of stealing she did not ask for the manager the Respondent stated:

I didn’t know who this lady was. I knew who the store manager is. It wasn’t like it was the guy who’s there – there is usually a man at loss prevention. I didn’t know who this lady was. I thought she was a cashier for all I thought – somebody who worked there. Not for nothing it’s a black neighborhood – we’re all black in there. I didn’t know who she was; I knew she was part of the store. She came out of the store, (CX-1 p. 21).

The Respondent proceeded back to the precinct and did not inform anyone there that she had an incident at the store because she did not view it as an incident.

The Respondent has been a member of the Department for thirteen years, and agreed that when the woman approached her near the exit she was accusing her of shoplifting. She did not feel, however, that this warranted being reported to a supervisor because she “didn’t think it was serious.” She indicated that because she was not detained “or something” she left the store and returned to work.

With respect to her personal vehicle, the Respondent indicated that it is authorized to be used for Department use. The Respondent was asked again about being stopped in the store. She agreed that she was stopped by the doors leading from the main store to the lobby area and asked by the woman stopping her if she had paid for some items and not others to which the Respondent stated "I don't think so."

The Respondent did not know why the woman who had stopped her informed Internal Affairs investigators that the Respondent said to her, "yes, I know I have items I didn't pay for." The Respondent indicated she was offended at the woman's remarks and was not going to wait as a result. She stated that she straightened the situation out by leaving. She agreed that she is known in the store as a Community Affairs officer and agreed that she was on duty when she was in the store despite the fact that she stated she was not "acting in a capacity of working."

The Respondent did agree that she signed out that day and that she was called back to the command at a later time. She denied monitoring the police radio for the purpose of determining if shoplifting calls were dispatched for the store she was at and was unaware if any calls were dispatched there prior to her leaving work. She agreed that she signed out at 4:33 pm on January 11, 2007, and denied being aware of a 3:49 pm shoplifting call being dispatched to that store.

The Respondent acknowledged that she previously said she discarded the hairclips at the cashier checkout counter. She stated she was "at a line I guess. I don't remember." She elaborated that it was by the aisle and she did not recall if anyone was in front of her but agreed that it was near the vicinity of the checkout counter. When asked if it was possible the Pathmark employee who stopped her was unaware that the Respondent had discarded the items



she previously placed in her bag, she stated, "I don't know what she was thinking." The Respondent wanted to go into the security office.

The Respondent maintained that she discarded the hairclips and a Lean Cuisine. She wanted to go into the loss prevention office for the purpose of showing the Pathmark employee that she did not have unpaid merchandise in her bag. The Respondent stated, "I wasn't doing things in the hallway. She didn't want to do that," and she denied being told to wait while the employee summoned additional assistance. Her reason for leaving her water behind at the store was because she was offended.

When asked if she was aware of that there are a lot of cab drivers waiting for fares outside of Pathmark, the Respondent indicated in the negative. She denied running out of the store at a high rate of speed, indicating she was attired in a dress with high heels. She did admit to walking out faster, but claimed it was not running. The Respondent maintained that the employee went back into the store and agreed that she left the store at that point. She did not know how long this took.

Summary of Interview of [REDACTED]

[REDACTED] the security guard for the store that the Respondent was at on January 11 was interviewed by members of the Internal Affairs Bureau and the Queens South Investigations Unit.

She indicated that as she was working on that date, she made an observation with respect to the Respondent. She observed her:

[M]oving some facial stuff and some makeup and she placed it in her bag. Then she proceeded to the bank which is on the other side of the store and I watched her deposit a lot of money inside the bank. So I still watched her. When she went to the register she purchased water and then I went back to my office and waited for her outside in the vestibule and approached her. I asked

her if she had some merchandise that wasn't purchased and she acknowledged the fact that she didn't purchase it in the first place. I brought her into the office and I went to go get another witness and that's when she ran out of the office and a group of guys outside said that she got into a grey Maxima. Somebody wrote her license plate down.

She went to the bank for the purpose of getting a photograph of the Respondent. There, she learned that the Respondent was a police officer at the 113 Precinct.

██████████ said that the Respondent was in aisle four when she observed her and then subsequently went to the vestibule area in order to wait for her. Further to encountering the Respondent in the vestibule, ██████████ informed her that she had unpaid merchandise.

According to her, the Respondent then stated, "I was going to pay for them but I forgot."

██████████ requested the Respondent accompany her to the office and ██████████ left in order to get a witness. The Respondent then left the store.

██████████ indicated that she went to the "floor" and "wasn't on the camera anymore" when she was making her observations. She did not know the bank employee's name who informed her that the Respondent was a police officer but added that all three of the female bank employees said that she was a police officer and that "everybody knows her." Two of the females were black and one was Indian.

██████████ explained that there are cab drivers outside the store daily to pickup fares and when they "see people run outside, they know they stole something..." The cab drivers informed ██████████ that they saw the Respondent run outside and get into a grey Maxima. One of the cab drivers noted the license plate number of this vehicle, however, all of the drivers "claimed the same thing: she ran into a grey Maxima..."

The Respondent was under ██████████ observation from 12:00 to 1:00, approximately one hour. ██████████ stated that her first observation was via the store surveillance camera

where she observed the Respondent putting makeup in her bag. From that point, she “got on the floor because once somebody puts something in their bag, I mean its good as gold...”

While she observed the Respondent, she saw that the bag was a brown Louis Vuitton bag and it was open, located on top of the shopping cart. [REDACTED] said she only saw the Respondent put items into her bag one time, but she does not know how many items she put into the bag because she never looked inside of it.

[REDACTED] learned the Respondent was a police officer at a later time; she never identified herself in the store [REDACTED] then indicated that she did not know how many items the Respondent took “but it was more than one” and that she guessed “it was like face creams or makeup, or both” because that merchandise was on display in the aisle she was in. [REDACTED] stated that she made the observation that the Respondent was secreting merchandise in her bag at about 12:30 pm, and then decided to follow her about the store at that point.

Upon approaching the Respondent at the exit to the store, [REDACTED] stated that she identified herself as store security and said “you have un-purchased items in your bag.” According to [REDACTED], the Respondent then replied, “I was going to pay for it.” [REDACTED] requested the Respondent to come into the office and she complied. [REDACTED] then left the office to get a witness and the Respondent left the store. She said, “My back was turned. As soon as I walked away that’s when she ran. You can see on the picture I’m walking and then she just ran out.” This happened in about ten seconds.

[REDACTED] agreed that the Respondent purchased items other than water, namely, food. The receipt for her purchases reflected this. Upon exiting the store, the Respondent had her shopping cart, her Louis Vuitton bag on top of the cart. Upon entering the office, [REDACTED] said that the Respondent took her bag and the Pathmark shopping bag into the office, leaving

the cart with the water outside. When she left the store, she left with her bag and the Pathmark bag. The cart containing the case of water was left behind in the vicinity of the office.

During the interview, [REDACTED] was shown a photo array. She made a positive identification with respect to a photograph contained in the array.

### The Respondent's Case

The Respondent testified in her own behalf.

### Detective Flora Krind

The Respondent has been a member of the Department for thirteen years. Prior to the instant case, she was assigned to the 113 Precinct Community Affairs Unit.

The Respondent acknowledged that she was once assigned to "patrol" and that in the 113 Precinct patrol generally involves being assigned to a sector car, or an RMP. She explained that on patrol, one would muster at the start of the tour at roll call to receive an assignment from the patrol supervisor. She indicated that all of patrol, scooter posts and foot posts assemble together for roll call. Community Policing, Community Affairs and the Youth Officers are not included or expected to be present at roll call. The Respondent agreed that during roll call, the individuals present are assigned meal times.

The Respondent testified with respect to the process for taking meal in a sector car or foot post, she explained: "We ask central, letting them know we have assigned meal. We call in central to let them know we are going on meal. We are prepared to have meal." She noted that the request can be granted or denied and if granted, "...once we take our meal, normally we will come back to the command and we go to the desk to let them know that we're taking meal at the moment and they put us in the book." She clarified that "the desk" is the front desk where the

supervisor is seated, and “the book” is the Interrupted Patrol Log. She indicated that it was this log that one is placed in for meal. She has never signed a “TS log” to put herself out to meal, nor has she ever seen it done in thirteen years in this Department.

As a Community Affairs Officer, the Respondent stated that she usually reported to the Commanding Officer of her precinct and that she worked directly for the captain. She explained that as a Community Affairs officer, upon arrival for duty, you report to the desk just to let them know that you are present for duty and then report directly to the captain. According to the Respondent, she did not have to attend roll call. The Respondent further elaborated upon her duties, stating that after she announces her presence at the desk she would go to her office and “take care of any of the Community Affairs duties at the moment. If the CO is in, report to the CO, let them know the daily activities for the day.” The activities are reported on various forms. The Respondent stated she is not required to carry an activity log, nor has she ever seen any other Community Affairs Officer ever carry activity logs.

With respect to meal periods, the Respondent stated that as a Community Affairs Officer you do not report to anyone. As she explained the meal process:

Basically, we are in the office all day. We barely go to meal. We can walk in and out. As far as meal is concerned, we basically walk in and out to go to meal. We get something, we come back, and we basically work at our desk. You know, unless we are going to a meeting or such. But other than that, we just go out for meal. We don't have to report to the desk.

The Respondent acknowledged that she was working on January 11, 2007 as the Community Affairs Officer in her precinct. For meal, she left the 113 Precinct and proceeded to Pathmark in Springfield Gardens to get something to eat. She indicated that this store is in the confines of the 113 Precinct, and she stated that it was her understanding of Department policy

that there were no violations with respect to picking up meals at establishments in the confines of her command. She stated that she did not have to ask for permission to do this.

The Respondent explained that she went into Pathmark:

When I went into the Pathmark, I got me a cart because I wanted to get water and I proceeded down some aisles. I was looking around. I went down a couple of the aisles, and then after I went down a few aisles, I picked up some things, I went to the bank. I had a large amount of money on me. I wanted to put it in the bank because my bank is in there. And then from there, I proceeded towards the checkout.

When asked if anything occurred at the checkout she stated:

Well, I had some things I didn't have enough money for, so I chucked some things, and I paid for my items, my water and a few things I had to eat, then I went by the Lotto machine, and I proceeded out towards the vestibule.

Asked to explain about the things she "chucked" on the side the Respondent stated:

The first aisle I went down was, as they said, it was the cosmetics aisles. There were some pins and other things I can't recall at the moment, but I picked things up. I had a cart to keep things on top in the cart, and things I didn't need I tossed them to the side as I got by, you know, when you check out.

The Respondent testified that she deposited between \$500 and \$600 in the bank located inside of Pathmark. After doing this, she went to get water and then went to the checkout area. She still had her shopping cart with her. Subsequent to paying for items, the Respondent explained that she was approached in the vestibule area stating:

As I was going towards the vestibule, I was approached by --I mean, there are two doors, one to go out and then there is a side door I guess for people to go in. I was stopped at the side door by a woman.

The Respondent explained that she did not know the woman and continued:

She said, excuse me, miss, did you pay for some items? I was like --I stopped because we were in the hallway with a lot of people...I said, I don't think so. I am looking in my bag. I'm like, I don't think so, no...So I was like, we were right there, there is the security office door right there. I didn't want to do anything in the hallway. I opened my bag to show her, and I see her, you

know, go towards the security office. She said, no, no, wait. And she went back into the Pathmark, (T-91).

The Respondent indicated in the past she has been present in this supermarket, in uniform and performing official duties, noting that she has been in the 113 Precinct for over 13 years, but she noted, she has never been there as a Community Affairs Officer.

She denied ever entering the loss prevention office in the vestibule. After the initial conversation the Respondent testified:

She left. She walked back into the store, and all she did, she didn't want to hear anything. I said let's go towards—I was going towards the security office because I didn't want to do anything in the hallway or whatever. I said let's go. She said wait, and then she left."

When asked what she did in response to that the Respondent stated, "She didn't give me a chance to respond. She just left, and I left." When asked why she left the Respondent testified: "She wasn't there anymore. She left, I was embarrassed, everybody was looking around. I am like, look, I am on lunch. I gotta go."

The Respondent went to her car and indicated that she was "pissed of." She returned to work at the precinct. She finished her tour at around 3:30 or 3:35 pm on that day. She stated that she had arrived at the supermarket between 11:30 am and 12:00 pm. She was not questioned with regard to what happened until she was "called back" some two hours later by a PBA delegate.

The Respondent testified that she was never accused of stealing items from the store by the employee that stopped her. She further denied making any admissions to her that she had stolen items. She made no notification to Internal Affairs because she stated she "didn't think [she] had an incident."

The Respondent stated that she has been a member of this Department for 14 years and that she has a good understanding of the Patrol Guide. She indicated that she was familiar with the policy requiring members of the service to report serious misconduct and corruption to Internal Affairs. She testified as to her understanding of the policy which would trigger her obligation to make a notification, stating, "If I am in uniform conducting my patrol duties and serious misconduct has occurred, I should call IAB." She testified that her shopping in Pathmark was for her own personal use and that she was not acting in an official capacity.

On cross-examination, the Respondent agreed that she did not notify anyone that she was leaving the stationhouse for meal on January 11, 2007. The Respondent initially stated that she was not required to do so, but subsequently agreed that she was. She further acknowledged that she was now aware that the Patrol Guide does not make exceptions for Community Affairs Officers.

When asked if it was permissible to go shopping on a meal break, the Respondent indicated that she was not going shopping. She acknowledged that she purchased a case of water, plums, apricots, frozen food items and Lean Cuisines during her visit to the Pathmark. She stated that the case of water lasts a week. The Respondent acknowledged going to the bank and when asked if she was aware that it was not permissible to conduct personal errands during meal break, the Respondent replied "If you say so."

The Respondent was asked about her understanding of who is required to maintain an activity log. She indicated "...those who are on patrol, those who have foot posts, scooter. I know at the time CPU unit at the time because you can get scratched." She agreed that on January 11, 2007, she did not maintain an activity log, and therefore, there were no entries on



that date relating to a meal break. Upon inquiry by the Court, the Respondent stated she has never been “scratched” by any supervisor in ten years as a Community Affairs Officer.<sup>2</sup>

The Respondent acknowledged that on January 11, 2007, she went on meal break and drove to the Pathmark supermarket at Springfield and Merrick Boulevards in the confines of the 113 Precinct. She stated she was wearing a dress, and agreed that she went shopping for food and to deposit money in the bank. She went down an aisle containing cosmetics but did not recall the aisle number. She acknowledged that she was pushing a shopping cart around the store and that her handbag was located in the top “child seat portion” of the cart. She was unable to recall if the handbag was open or closed. She denied putting any clips inside of this bag.

The Respondent acknowledged that on February 8, 2007, she was interviewed by members of Internal Affairs. She agreed that she was read warnings about making false statements and she indicated that she was truthful during the interview. She was questioned with respect to the following inquiry during the interview:

Q: Now at any time—you said you were in the aisle with the shampoo—did you take any items off the shelf when you were in that aisle?

A: When I was there, I took off some clips off the aisle. I was looking at the clips.

Q: You said you were taking clips. Are you referring to some type of hair clip?

A: Yeah.

Q: What did you do with those clips?

A: I have a cart in which I have my purse. I tuck it in my purse and keep on walking. I looked at items down the aisle.

The Respondent recalled being asked these questions and supplying those answers. She stated that “when I meant tucking, I meant putting it on top, right there on my purse.” She

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<sup>2</sup> The Respondent explained this is the process whereby a supervisory officer signs the activity log of a subordinate officer to indicate that the officer was inspected.

denied tucking it in the interior of the purse, indicating that she “should have said on top...” The Respondent did acknowledge putting those items in her purse area and continue walking around the store.<sup>3</sup>

She next proceeded to the bank and deposited approximately \$600 with a teller. She stated that she goes to that bank and that they know she is a police officer because it is “on [her] card.” She explained this card was the card that is completed upon opening a bank account. After the bank, the Respondent agreed she got a case of water, that she “probably” picked up a couple of Lean Cuisine dinners, that she picked up a couple of plums and apricots and “probably” got some frozen vegetables and then proceeded to the cash register. She stated that this whole process took “less than an hour.”

At the cashier, the Respondent acknowledged that she threw items to the side that she did not want to pay for—namely, clips. She stated that she got these clips from the “first aisle” that she went down. She paid for some items and used a Pathmark shopping card and then bought one lotto ticket. She agreed that she went through a sliding door and into a vestibule area. She acknowledged that before she could proceed further, she was stopped by a black woman in plain clothes, about 20-30 years old. She agreed that this woman asked if she had paid for some items and not paid for other items. Asked if she thought this woman was an employee of the store, the Respondent indicated, “I guess I thought she was or wasn’t. I knew she was coming in from the store. She could have been anybody. I mean, why would a stranger ask me that question?” She conceded that this woman was “probably” someone who worked for the store.

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<sup>3</sup> The word “tuck” appeared in the transcripts prepared by the Department (DX 1B and DX 1C) which were available at the time of the Respondent’s testimony. In a more accurate transcript prepared by the Court at a later date (CX-1) the word “tuck” does not appear as it is not on the audio tape (DX 1).

The Respondent denied telling the woman that she meant to pay for the items in question. When asked if she understood that the woman was “more or less accusing you of shoplifting” the Respondent stated: “She asked me if I paid for some items and didn’t pay for some items.” When asked again if the woman was accusing her of shoplifting the Respondent stated: “At that time, I didn’t know what she was accusing me of. I guess so, yes...I understood that she wanted to know did I pay or not.”

The Respondent insisted that she did not know what the woman was accusing her of. The Assistant Department Advocate read the following questions and answers from the transcript of the Official Department Interview:

Q: And if you didn’t pay for items and you leave the store, what is that called?

A: Theft.

Q: Shoplifting. Okay. Did you believe she was accusing you of that at that point in time?

A: Oh, Yeah.

The Respondent recalled giving these answers during the interview. The Respondent conceded that she understood that “She was accusing me of theft” explaining that at first she didn’t understand what the woman was saying “Then when she told, me yes.” (T – p. 114)

The Respondent stated she began to proceed to the security office, and agreed that her purpose in doing so was because she did not want anyone else to see what was going on. She acknowledged that the employee said “wait,” but denied that she asked her to wait while she got another store employee. The woman proceeded back into the supermarket and the Respondent said “when she left and went back in the store, I left.” She was unsure if she left abruptly. The Respondent did not call out to the employee as she was going back into the store.

The Respondent admitted that she left behind her case of water when she left the store. She stated she did so because she was mad and upset.

When asked to explain why being upset led her to leave behind water she had paid for the Respondent stated: "I just left the water. I just left. I had all the other bags in my hand. I took my bags and I left." When asked again why being upset led her to leave behind an item she had paid for the Respondent replied: "I don't know. I left the water," (T – p. 117).

The Respondent agreed that she had intended to wheel the water out to her car in the shopping cart but indicated she could have carried the water out to her car. She was then asked: "So you only took the things you could carry and left behind the things that you had to take the cart for, correct?" to which the Respondent stated: "I only left the water." She was then asked: "That's because you wanted to leave fast right?" to which the Respondent replied: "No, because I left the store. I had to get back."

The Respondent was then asked if she understood that just moment before she left the store a store employee had accused her of theft or shoplifting the Respondent stated: "She didn't come back or anything," adding that she knew the woman had accused her. The Respondent agreed that she got into her car and drove back to work.

The Respondent agreed that the store is located in the confines of the 113 Precinct and that she has responded to that store as a police officer in the past. The Respondent conceded that she was on-duty and that being on meal break did not mean she was off-duty.

Thereafter the following questions and answers:

Q. You are still on duty?

A. Yes.

Q. So you were accused of a crime.

A. I was what?

Q. You were accused of a crime while on duty, correct?

A. I was accused of a crime?

Q. Isn't theft a crime?

A. She didn't accuse me of a theft.

Q. She said –

A. She asked me did I or did I not pay for the items. Then she asked me to wait.

Q. A few moments ago you told us you understood that you were being accused of theft or shoplifting, right?

A. No, what you asked me was did I understand that I was accused of theft.

Q. And you said yes, right?

A. I said, yeah, if that's what she was doing. I waited, (T - p. 120).

The Respondent acknowledged that upon arriving back at the 113 Precinct, she did not report to anyone what had happened at the supermarket. She did not call Internal Affairs or speak with a supervisor at her precinct.

On re-direct examination, the Respondent stated she was never asked "how Community Affairs Officers operate in the 113<sup>th</sup> Precinct" during her Official Department Interview. She was never asked to produce any precinct records such as an Interrupted Patrol Log. The Respondent testified that she was never asked about an activity log or if she notified the telephone switchboard operator about going to meal.

The Respondent stated she was not accused of shoplifting, and the Pathmark employee never mentioned the word "shoplifting" nor did she ever mention the word "theft." The Respondent reiterated that the woman asked if she had not paid for some items. The Respondent stated she felt violated upon being asked this question. She testified that she is not aware of any law or regulation that required her to wait in the store. She also stated that she was never asked to open her handbag and that she did it on her own volition and because she "wanted to do it."

The Respondent testified that she was upset about the manner in which she was approached and that she was asked the question by the woman in a public vestibule. She stated that the supermarket was crowded and lots of people were going in and out. She was

unaware if Williams checked to see if the clips were where she claimed to have put them. With respect to the Patrol Guide provision requiring that members report corruption to Internal Affairs, the Respondent opined that it applies when accused of wrongdoing in an official capacity. When in the supermarket, the Respondent indicated she was not acting in her official capacity.

Based upon the Respondent's experience, she stated units on patrol have stopped off at stores in the precinct to purchase items, water and other various sundries. According to her, this is not documented in activity logs and it is commonplace in both the 113 Precinct and other commands.

### FINDINGS AND ANALYSIS

Three witnesses testified in this trial: Renna, McCormick and the Respondent. Neither Renna nor McCormick witnessed the incident. Renna recounted a portion of a conversation he had with [REDACTED] McCormick testified that he responded to the scene. He apparently spoke with [REDACTED] as well as some other security people at Pathmark, all of which amounted to a recounting of what [REDACTED] said. [REDACTED] herself did not testify. A transcript of an interview with her was placed in evidence by Renna. Although there was reference to videos and a photograph no videotape or photographs were offered in evidence; however, McCormick did testify that he observed a photograph that was blurry. Consequently the only evidence about the incident itself is the hearsay statement of [REDACTED] and the testimony of the Respondent at the trial and at her Official Department Interview.

Many of the facts are undisputed. There is no question that the Respondent was at the Pathmark store on Springfield Blvd on January 11, 2007. There is no question that after checking out at the cashier she was approached by [REDACTED] a store employee, who

questioned her regarding whether she had paid for all her items. It is unquestioned that [REDACTED] asked her to remain. It is also unquestioned that the Respondent left the store in a hurry leaving behind a case of bottled water for which she had paid.

The central allegation in this case is contained in Specification No. 2 and it charges the Respondent with Petit Larceny and therefore should be dealt with first. [REDACTED] said that the Respondent entered the store at about 12:00 and that she went to the aisle that has cosmetics. After watching her for some time, at about 12:30, [REDACTED] observed the Respondent on video secreting merchandise, multiple times, in her handbag in the cart. When [REDACTED] confronted the Respondent at the door, she said that the Respondent acknowledged that she had unpaid articles in the cart. [REDACTED] also stated that the Respondent fled the scene when she, [REDACTED], went to get assistance.

The Respondent's testimony at this trial and at her Official Department Interview, confirm important portions of [REDACTED]'s statement. Significantly the Respondent's own account of events raise questions about her credibility. Indeed what stands out is the inconsistency, illogic and evasiveness found in the Respondent's version of what occurred.

One example of this can be seen in how she dealt with the issue of whether she knew that when [REDACTED] stopped her as she was about to leave the supermarket she was being accused of shoplifting. There is no question that [REDACTED] never used the word "shoplift" or "theft" but it is equally clear that the Respondent understood the import of what [REDACTED] was saying when she asked if the Respondent was leaving the store with unpaid merchandise in her bag. Why else would the Respondent have been embarrassed, offended or upset as she claimed to be? Yet the Respondent repeatedly denied being accused of shoplifting only to concede the point and then denying it only to be forced to admit it again.

There is also the issue of opening the bag to show [REDACTED] that she had taken nothing. During the trial the Respondent claimed that she didn't want to do anything in the hallway because there were lots of people but a moment later she said she opened her bag to show [REDACTED] the content while [REDACTED] kept going towards the security office. It is certainly inconsistent to say that she did not want to do anything in public and yet offer to show the contents of her bag in that same public area.

This brings up yet another problem with the Respondent's version of events. She said that she never entered the security office and that the door was closed. It makes no sense for [REDACTED] to have taken her to the closed security office door. [REDACTED] said that they entered the security office and that is where she told the Respondent to wait while she went to get assistance.

There was more evasiveness and inconsistency when the Respondent tried to explain why she left the store. At some points she claimed it was because she had to get back to work, yet she seemed unhurried before the stop, remaining in the store for about an hour to buy a few items, go to bank, even stopping to get lottery tickets after she passed the cashier. At other times she claimed she left because she was embarrassed or angry but she took no action, consistent with innocence, to allay that embarrassment or anger, such as seeking out the manager or simply waiting, as [REDACTED] had instructed her.

Then there is the matter of the water. The reason the Respondent gave for going to the store in first place was to stock up on water, yet she left the water, which she paid for, behind. Again, she said she left it because she was suddenly in a hurry to get back to work or alternatively, because she was embarrassed, but none of this explains leaving the water



behind. Indeed leaving the case of water, which might slow her down, is consistent with nothing other than flight.

During the trial the Respondent was questioned from the transcript of the Official Department Interview. She was confronted with the fact that she admitted that she had “tucked” the hairpins into her bag. The Respondent indicated that when she said “tucked” she had meant that she put it on top of her bag. A careful review by this Court of the actual tape recording of the Official Department Interview, DX 1A, which is the best evidence, indicates that she never used the word “tuck” but said that she “put things on top or in my purse.” While this answer was less than clear later in that same Official Department Interview the Respondent indicated that before she got to the check-out counter she went through the items in her bag and took out the hairclips “chucking” them aside. So in fact, in an unguarded moment, she did indicate that she had put unpaid items in her bag, confirming [REDACTED] observation.

As has been noted the Respondent’s explanation for what she did when she was stopped by [REDACTED] makes no sense but confirms events reported by [REDACTED] in that she was stopped, asked if she unpaid items in her bag, taken towards the security office and asked to wait. Further the Respondent confirms what [REDACTED] said, in that when [REDACTED] went towards the interior of store to get assistance the Respondent left and that she did so in a hurry. The Respondent’s act in leaving the store completed the larceny as she left with whatever unpaid merchandise she had in her bag.

Which brings us to the last issue regarding the Petit Larceny, which is: “what was stolen?” When asked by the Court during his closing argument what he believed was stolen the Assistant Department Advocate indicated that it was the hairclips the Respondent

identified as having put in her purse. While it is possible that hairclips were stolen there is no evidence that they were the object of the larceny and the Respondent testified that she left the hairclips behind before going to the cashier.

A more accurate answer is that the evidence does not inform us exactly what was taken.

██████ described the items as “some facial stuff and some makeup” the Respondent concedes putting hairclips in her bag. When the Respondent left the store she left with whatever items she had not paid for and it is impossible now to know exactly what there were. Whatever item or items were involved it constituted “property” within the meaning of section 155.00 subdivision 1 of the Penal Law. It is well established that the “corpus” of a crime can be established circumstantially, see People v. Biernbaum 301 AD2d 119, (2002). There is no reason for that to be any less true of Petit Larceny than it is of murder.

The credible evidence before this Court establishes that the Respondent secreted merchandise in her bag while roaming the isles of the Pathmark store, that when she was confronted before leaving the store she initially complied with ██████’ request to go to the security office, but when ██████ turned away she fled with the unpaid merchandise in the hope of escaping without having to deal with the consequences of her act. There is no reasonable hypothesis consistent with innocence to explain the Respondent’s actions and therefore the Department has established by a preponderance of the evidence, that the Respondent committed the crime of Petit Larceny; consequently, the Respondent is found Guilty of Specification No. 2.

Specification Nos. 3 and 4 charge the Respondent with failing to remain at the store when she was accused of shoplifting and failing to notify the Department's Internal Affairs Bureau of the incident.

Counsel for the Respondent has argued that she was not on duty during her meal period when this incident occurred. He argued that the Respondent was essentially a civilian and cannot be held to any higher responsibility regarding any duty to remain at the scene once an accusation of this nature was made. Similarly he has argued that her civilian status exempts her from any reporting requirement.<sup>4</sup>

It is uncontroverted that the Respondent was on duty and working a day tour (8:00 am to 4:33 pm) on the day in question, January 11, 2007. Patrol Guide Section 212-02 entitled Meal Period specifically and unequivocally provides that: "Members on meal period are still on duty and therefore will remain alert and not engage in activities ordinarily prohibited." In any event Patrol Guide section 207-21 specifically indicates that it refers to "criminal activity or serious misconduct" committed by a member of the service whether on or off duty.

Patrol Guide section 207-21 also specifically provides that "a member of service receiving an allegation of corruption against oneself will request a supervising officer to respond to the scene." Obviously, implicit in that is that she had to remain at the scene. Moreover she never contacted a patrol supervisor and indeed even went back to the precinct and told no one.

Section 207-21 also requires a notification of allegations of corruption or serious misconduct be reported to the Internal Affairs Bureau. The section provides several telephone numbers that can be called and notes that they are available on a 24 hour a day basis. Plainly

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<sup>4</sup> Even if the Respondent had been off-duty under Patrol Guide section 212-32 she would have had a responsibility to report the shoplifting allegation immediately, remain at the scene and request the response of a patrol supervisor.

the allegation that she shoplifted is serious misconduct and or corruption and again the Respondent did not report it. The Respondent is therefore found Guilty of Specification No. 3 and Specification No. 4.

Specification No. 1 addresses three separate alleged failures to comply with the rules regarding meal periods. Subdivision "a" of this specification alleges that the Respondent failed to notify the (telephone) switchboard operator at the beginning of the meal period, the location where the meal was to be taken and the return to post.

The Respondent acknowledges that she did not notify the switchboard and claims that as she is not on patrol she is not required to follow this rule. There is no evidence that she was exempted from this requirement and therefore she is found guilty of this subdivision of Specification No. 1.

Subdivision "b" charges that the Respondent with failing to "obtain meal on assigned post, if possible, and in a place maintained for eating purposes." The Respondent went to a supermarket within her precinct, as required. Whatever else she did in that supermarket she purchased food. It would seem that she was reasonably in compliance with this provision; she is therefore found Not Guilty of subdivision "b" of Specification No. 1.

Subdivision "c" charges the Respondent with failing to make an Activity Log entry prior to leaving post including meal location address and upon returning to post. The Respondent admits that she did not do this and said that she was exempt from this requirement. The Respondent testified, without challenge, that no supervisor reviewed or inspected her activity log. Certainly if supervisors were lax that is a mitigating factor but it is not a defense. The Respondent's own conduct demonstrates the need for a member of the

service to account for his or her activities during the day and the Respondent has not demonstrated that she was exempt from this requirement.

Consequently, the Respondent is found Guilty of this subdivision of Specification No. 1.

### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on February 28, 1994. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found guilty under Specification No. 2 of Petit Larceny. This Department has longstanding policy of dismissing or otherwise separating from the service officers found guilty at a Departmental trial of Petit Larceny, see for example: Disciplinary Case No. 81810/05 signed 08/08/06, Disciplinary Case No. 79451/03 signed 01/05/06, Disciplinary Case No. 80601/05 signed 10/24/05, and Disciplinary Case No. 79990/04 signed 04/18/05. As a result the penalty recommendation with regard to Specification No. 2 must be termination.


Under the circumstances of this case it is also important to discuss a penalty recommendation with regard to Specification Nos. 3 and 4. The purpose of the requirement that a member of the service immediately report an allegation of misconduct and remain at the scene even when the member him or herself is the subject of the allegation is obvious; to allow the Department to immediately investigate and assess the situation.

In a case like this the failure of the Respondent to report the incident and remain at the scene deprived the Department of the opportunity to effectively investigate the incident.

Given that the underlying act the Respondent was accused of would result in termination the only the reasonable penalty with regard to failing to notify and remain at the scene is termination. The alternative would send the very troublesome message that a member of the service could do better at a Departmental trial by running away from the scene than he or she might do if they remained. The penalty under Specification Nos. 3 and 4, standing alone, would have to be termination.

Consequently, the penalty recommendation in this case must be termination.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner – Trials

